

MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for Preliminary Results of Full  
Sunset Review of the Countervailing Duty Order on Cut-to-Length  
Carbon Steel Plate from the United Kingdom

### Summary

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the countervailing duty (CVD) order on cut-to-length carbon steel plate (CTL plate) from the United Kingdom. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this full sunset review for which we received substantive responses by parties.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

### History of the Order

On August 17, 1993, the Department of Commerce (Department) published in the Federal Register the CVD order on CTL plate from the United Kingdom.<sup>1</sup> See Final Affirmative Countervailing Duty Determination: Certain Steel Products from the United Kingdom, 58 FR 37393 (July 9, 1993) (Final Determination) as amended by Countervailing Duty Order and

---

<sup>1</sup> British Steel Corporation (British Steel) was a government-owned entity, and in 1988, prior to the period of investigation (POI), it was privatized and reorganized as British Steel plc (BS plc). On September 17, 1995, the Department issued its Final Results of Redetermination Pursuant to Court Remand on General Issue of Privatization, British Steel plc v. United States, Slip Op. 95-17 and Order (CIT Feb 9, 1995) (1995 Redetermination Final) and determined the net subsidy rate for BS plc to be 21.30 percent ad valorem. BS plc has reported that in 1999, it became part of Corus Group plc. (Corus) after merging with Koninklijke Hoogovens.

Amendment to Final Affirmative Countervailing Duty Determination, (Order) 58 FR 43748 (August 17, 1993). The Department found six programs countervailable:

1. Government Equity Infusions into British Steel Corporation (BS plc);
2. Cancelled National Loan Fund (NLF) Debt;
3. Regional Development Grants (RDG);
4. European Regional Development Fund Aid (ERDF);
5. European Coal and Steel Community (ECSC) Article 54 Loans/Interest Rebates;
6. Transportation assistance.

The net countervailable subsidy determined was 0.73 percent ad valorem for Glynwed Steel Limited (Glynwed)<sup>2</sup> and 12.00 percent ad valorem for “All-Other” producers/exporters. See Order (rate was amended with the publication of the order; the amended rate is noted here).

As a result of a 1995 Court of International Trade (CIT) decision, the average useful life (AUL) applied to these subsidies was increased from 15 to 18 years. See British Steel plc v. United States, 879 F. Supp 1254 (CIT 1995) (British Steel Litigation). Accordingly, the Department adjusted the rate applied to BS plc to 21.30 percent ad valorem for the six programs found to have been countervailable in the original investigation. See 1995 Redetermination Final and “Calculations supporting Final Results of Redetermination Pursuant to Court Remand on General Issues of Privatization: British Steel plc v. U.S.” (July 1, 1995), on file in the Central Records Unit, Room B-099 of the Department of Commerce building (CRU).

Since the investigation, no administrative reviews of the order have been conducted. The Department has completed one sunset review of the CVD order pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Cut-to-Length Carbon Steel Plate from the United Kingdom: Final Results of Expedited Sunset Review of Countervailing Duty Order, 65 FR 18309 (April 7, 2000) (First Sunset Review). As a result of that review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 0.73 percent ad valorem for Glynwed and 12.00 percent ad valorem for “All-Other” producers/exporters. In accordance with 19 CFR 351.218(f)(4), the Department published a notice of continuation of the order based on affirmative findings by both the Department and the International Trade Commission (ITC). See Continuation of Antidumping and Countervailing Duty Orders on Certain Carbon Steel Products from Australia, Belgium,

---

<sup>2</sup> On May 21, 1999, Niagara LaSalle Corp., a United States producer of cold drawn steel bars, purchased the equipment, inventory, and certain other assets of the eight steel bar businesses of Glynwed, and placed them into a newly created subsidiary, Niagara LaSalle (UK) Limited (Niagara), the current producer of the subject merchandise. See January 9, 2006 Niagara LaSalle Second 129 Response to Questions Regarding Change-in-Ownership with respect to Glynwed/Niagara Assets. On November 30, 1999, the Department determined that Niagara LaSalle was the successor-in-interest of Glynwed in Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Changed Circumstances Antidumping Countervailing Duty Administrative Reviews, 64 FR 66880.

Brazil, Canada, Finland, France, Germany, Japan, South Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, 65 FR 78469 (December 15, 2000).

Following the First Sunset Review, the Department conducted two Section 129 reviews. See Notice of Implementation Under Section 129 of the Uruguay Round Agreement Act; Countervailing Measures Concerning Certain Steel Products from the European Communities, 68 FR 64858 (November 17, 2003) (First 129) and Memorandum to All Interested Parties from Barbara E. Tillman, Director, Office of AD/CVD Operations 6, Import Administration Re: “Final Decision in the Second 129 Proceeding – First Sunset review of the Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from the United Kingdom” dated May 26, 2006 (Second 129). In the Second 129, the Department determined that the privatization of BS plc did not extinguish the non-recurring, allocable subsidies received by BS plc. However, with respect to the change in ownership of Glynwed, the Department concluded that the sale of Glynwed was an arm’s-length transaction negotiated between unrelated private parties. Thus, the Department concluded that because it was a private-to-private sale at arm’s length and, absent evidence to the contrary, the transaction was for fair market value and the countervailable benefits attributed to Glynwed in the original investigation were extinguished by the change in ownership. See Second 129 at 15.

### Background

On November 1, 2005, the Department initiated a sunset review of the CVD order on CTL plate from the United Kingdom pursuant to section 751(c) of the Act. See Initiation of Five-year (“Sunset”) Reviews, 70 FR 65884 (November 1, 2005). The Department received a notice of intent to participate from the following domestic interested parties: Nucor Corporation (Nucor), IPSCO, Inc., Mittal Steel USA Inc., Oregon Steel Mills, Inc., and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (USW) (hereinafter, collectively domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic producers of CTL plate in the United States and as a certified union which is representative of an industry engaged in the manufacture, production, or wholesale of CTL plate in the United States.

The Department received substantive responses from both domestic interested parties and the following respondent interested parties: The Government of the United Kingdom (UKG), The European Union Delegation of the European Commission (EC), Corus, Niagara, and Spartan UK Ltd (Spartan) (collectively, respondents). On December 21, 2005, after analyzing the substantive and rebuttal responses of interested parties, the Department determined that the participation of the respondent interested parties was adequate, and that it was appropriate to conduct a full sunset review. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary, Import Administration, Re: Adequacy Determination; Sunset Review of the Countervailing Duty Order on Cut-to-Length Carbon Steel Plate from the United Kingdom, dated December 21, 2005, on file in CRU.

On February 10, 2006, the Department extended the time limit for the preliminary and final results of the sunset review of the CVD order on CTL plate from the United Kingdom to no later than July 14 and September 27, 2006, respectively. See Cut-to-Length Carbon Steel Plate from Belgium, Sweden, and the United Kingdom; Extension of Time Limits for Preliminary and Final Results of Full Five-Year (“Sunset”) Reviews of Countervailing Duty Orders, 71 FR 7017 (February 10, 2006).

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and any subsequent reviews, and whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (ASCM). Below we address the substantive responses and rebuttal comments of interested parties.

#### *1. Likelihood of Continuation or Recurrence of Countervailable Subsidy*

### Interested Parties’ Comments

The domestic interested parties argue that revocation of the CVD order would lead to the continuation or recurrence of countervailable subsidization of CTL plate in the United Kingdom with countervailing rates equivalent to or greater than those found in the original investigation. In their substantive response, domestic interested parties argue that, after the issuance of the Department’s Final Determination, there was a dramatic decrease in the level of subject imports from the United Kingdom. They state that the imposition of CVD measures directly impacted the level of imports from the United Kingdom. Therefore, the domestic interested parties claim that the countervailing duties assessed on CTL plate from the United Kingdom continue to protect the U.S. industry from subsidized imports and revocation of the CVD order on CTL plate from the United Kingdom would likely lead to the continuation of subsidies at the same levels established in the original investigation.

In contrast, the EC argues that there will be no negative impact from revocation of the order under review. The EC argues that previous investigations have demonstrated that the United Kingdom steel sector in general and the producers of CTL plate in particular are no longer

benefitting from any subsidy. The EC argues that there is no likelihood whatsoever that the situation will change in the foreseeable future.

Additionally, the EC claims that the Department already knows from other investigations that these sectors have undergone a full restructuring in the past years under the monitoring of the EC. The EC states that the steel producers in the United Kingdom are fully privately owned and compete on commercial terms in international markets. The EC argues that the termination of the order would not impact the EC's policy on aid to the steel sector, which it claims is one of the strictest among WTO Members. The EC cites to Commission Decision 2496/96 of 18 December 1996 which prohibits the granting of aid to the steel industry, and further explains that aid is only allowed after EC notification and approval for the closing of facilities, for environmental reasons, and for research and development. The EC also states that through the results of previous investigations and reviews involving many British Steel companies, the Department is in possession of information showing that the British steel industry has not received any substantial assistance since 1988.

The EC argues that the programs countervailed in the original investigation have been terminated or involved one-time governmental actions which are not likely to be repeated. The EC states that British producers of CTL plate do not benefit from aid granted in the past nor from any other kind of financial assistance which may be considered a "subsidy" within the meaning of the ASCM.

The UKG also argues that there will be no negative impact from the revocation of the order under review. The UKG argues that the British steel industry is no longer benefitting from any subsidy and there is no likelihood that the situation will change in the foreseeable future. The UKG notes that the British steel sector underwent a full restructuring in the 1980's and all steel producers in the United Kingdom are wholly privately-owned and compete on commercial terms in international markets.

The UKG states that there is no likelihood of continuation or recurrence of subsidization and no justification for maintaining CVD measures on exports of CTL plate from the United Kingdom. The UKG claims that the programs countervailed in the original investigation were granted to the British producers of the product under review more than 20 years ago under totally different economic and political circumstances. The UKG claims that all of these programs have been terminated and are not likely to be reinstated.

Specifically, the UKG claims that the European Community State Aid Rules prohibit aid to the steel sector. The UKG claims that a major reason for the unlikely continuation of subsidization is the Commission Decision 2496/96 of 18 December 1996, which was updated as the "Multisectoral Framework" following the expiry of the ECSC Treaty, which prohibits the granting of aid to the steel sector, with certain exceptions. The UKG explains that the EC monitors and enforces the rules, and that there are serious repercussions for breaking the rules. It states that the system in place is efficient and has ensured that no new subsidies could have been granted to the European steel industry since at least 1995.

The UKG claims that Corus did not benefit from pre-privatization subsidies because all the subsidies countervailed in the original investigation were granted to British Steel before its privatization, and the UKG claims that full market value was paid for British Steel upon privatization. The UKG claims that this privatization expunged the benefit of any subsidy that existed at that time. The UKG claims that since privatization, Corus has operated on private, non-subsidized capital and competes on the market on the basis of commercial criteria.

The UKG maintains that the original rate for Glynwed was calculated purely on the basis of programs available to BS plc at the time. It further states that Glynwed did not receive any such subsidies and, therefore, its CVD rate should have been zero. The UKG notes that all subsidies formerly attributed to Glynwed no longer exist because they have been terminated and any outstanding benefits would have been removed by effect of the sale at arm's length and for fair market value of Glynwed's assets to Niagara LaSalle, UK Ltd. The UKG notes that the Department determined that Niagara LaSalle was the successor-in-interest of Glynwed in Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Changed Circumstances Antidumping Countervailing Duty Administrative Reviews, 64 FR 66880 (November 30, 1999). Additionally, the UKG points to the Department's practice in the "Change in Ownership" section of the issues and decisions memorandum for Certain Pasta from Italy: Final Results of Seventh Countervailing Duty Administrative Review, 69 FR 70657 (December 7, 2004) and the findings of the WTO appellate body in the United States - Countervailing Measures Concerning Certain Products from the European Communities WT/DS212/AB/R (December 9, 2002), which reflect the presumption that a private-to-private sale between two unrelated parties is at arm's length and for fair market value, thus removing the benefit of any prior subsidies.

Corus argues that revocation of the CVD order on CTL plate from the United Kingdom is not likely to result in the recurrence or continuation of countervailable subsidies. Corus notes the history of the case, and citing the Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 and 18874 (April 16, 1998) (Sunset Policy Bulletin), states that the benefit streams for the nonrecurring subsidies found in the original investigation have already expired and, thus, will not continue beyond the end of this second sunset review period. Corus points to the Department's finding that the AUL of the nonrecurring countervailable programs used in the original determination was 15 years and pursuant to the CIT litigation pertaining to the final determination, the Department calculated an 18 year company-specific AUL for BS plc. Corus notes that regardless of the AUL, the benefit stream for the nonrecurring subsidies has expired, and revocation of the order will have no effect.

Corus argues that each of the four nonrecurring subsidies the Department found in the original determination has expired. First, Corus states that the equity capital for the "Government Equity Infusions into British Steel Corporation" was received every fiscal year from 1977/78 through 1985/86, at least 19 years ago, and thus the benefit stream has expired. Second, Corus states that at the end of BS plc's 1980/81 fiscal year, the Iron and Steel Act of 1981 extinguished a percentage of NLF loans, which Corus notes was 24 years ago. It thus states

that the benefit stream has expired. Third, Corus notes that British Steel received RDG from 1977/78 to 1985/86; thus, Corus argues, the last of these grants was received 19 years ago and the benefit stream would have expired. Fourth, Corus claims that the ERDF aid provided to the UKG by the EC to fund infrastructure development at one of British Steel's facilities was so small that the Department expensed these subsidies in the year they were granted and as such, the benefit stream for this program has expired.

Corus notes that a loan benefit is calculated over the life of the loan. It states that British Steel received loans in 1977 and rebates on interest payments on these loans in the 1980's through the ECSC Article 54 Loans/Interest Rebate Program. Corus states that proprietary information in the Department's Memorandum to the File from Kristal A. Eldredge, Countervailing Duty Investigation: Certain Steel Products from the United Kingdom, Final Determination – Calculation Package (June 23, 1993), indicates that the term of the loan was completed many years ago. Thus, Corus argues any benefit from the loan would have expired many years ago, and the previous existence of this loan program and the interest rate rebates do not evidence a likelihood of future subsidization if the order is lifted.

Corus further argues that the programs the Department originally determined to be countervailable no longer exist, or have been terminated. Corus cites to the "Multisectoral Framework" (Official Journal, C70, 19.03.2002, pages 8-20) as extending the pre-existing prohibition under the former Steel Aid Codes of the ECSC. Corus argues that pursuant to this proscription, as a matter of law, EU steel producers such as Corus are no longer eligible to receive RDG from the UKG or ERDF Aid. Additionally, Corus claims that the EU state aid rules also bar government-sponsored equity infusions and/or cancellation of debt. Corus additionally notes that with the expiry of the ECSC as of July 23, 2002, the ECSC Article 54 loans and rebates no longer exist.

Finally, Corus argues that the previously state-owned British Rail was privatized in 1997. Corus states that there is, therefore, no longer any possibility of government subsidies being provided to privately-owned rail operating companies.

Niagara argues that the revocation of the order will not result in subsidized sales by Niagara because the potential subsidy programs that were attributed to Glynwed in the original CVD investigation have now expired, and cannot be renewed under EU law. Niagara further states that the rate attributed to Glynwed in the original investigation was based on best information available. Niagara argues that the basis for the original decision against Glynwed has ceased to exist because at the time of the initial investigation the scope of the order covered a small percentage of Glynwed's product range, so Glynwed concluded that it was not cost effective to participate actively in the investigation. Niagara notes that Glynwed's lack of participation is what led to Glynwed's default CVD rate.

Spartan notes that in 1999, Trametal SpA of Italy (Trametal) acquired the assets of the former Spartan Redheugh Ltd. (Spartan Redheugh), including a plate mill where the subject goods can be produced. Spartan explains that Trametal is part of Gruppo Malacaza of Italy

(Gruppo Malacaza). Spartan further explains that in 2001 Tramelmetal established Spartan UK Ltd. as a United Kingdom registered company and transferred the assets to Spartan, who then brought the mill back into operation. Spartan notes that neither Spartan, Tramelmetal Spa, nor Gruppo Malacaza had any relationship with the former Spartan Resheugh. Spartan argues that prior to 2001, it had never produced the subject goods or any other product in the United Kingdom and thus no subsidies could have been paid to it during the period of investigation.

Additionally, Spartan argues that the subsidy programs which gave rise to the all-others rate no longer exist. Specifically, Spartan states that the UKG is explicitly prohibited by European Union law from providing regional subsidies of any sort to steel companies. Therefore, it argues that United Kingdom RDG and ERDF aid are prohibited and thus no longer exist. Further, Spartan argues that following the expiry of the ECSC in July 2002, the ECSC Article 54 loans and rebates program no longer exist. Next, Spartan states that after the privatization of British Rail in 1997, there is no longer any possibility of government transportation assistance subsidies being provided to the now privately-owned rail operating companies. Spartan further argues that any BS plc-specific subsidies were, by definition, paid and payable only to BS plc and any ongoing benefit from these subsidies was expunged by the privatization of British Steel. Accordingly, Spartan argues that it is impossible for it to receive subsidies from any of the above-mentioned programs.

However, Spartan argues that, if the Department were to find that the all-others rate subsidies were non-recurring and continue to bestow a benefit upon Spartan until fully amortized, the Department should note that all subsidies have been fully amortized, and that any assets of the former bankrupt Spartan Redheugh were acquired in an arm's-length transaction for fair-market value. Accordingly, Spartan argues that the subsidies assessed for the all-others rate would not have passed through to Spartan. Thus, it argues that revocation of the order could not possibly result in any subsidized sales to the United States.

In their rebuttal comments, domestic interested parties argue that the Department should reject the contentions of respondents that the subsidy programs have lapsed, and find that subsidization would be likely to continue or recur at the same or greater levels than found in the original investigation should the order be revoked. Domestic interested parties argue that respondents' claims that the programs countervailed in the original investigation have ceased to exist fail for several reasons: they argue that the determination as to whether certain non-recurring allocable subsidies survived the privatization of British Steel will be determined based on the outcome of the Department's Second 129; further, they argue that regardless of the Second 129 determination on privatization, Glynwed, now Niagara, is subject to an above de minimis CVD rate of 0.73 percent which would, by itself lead to a likelihood determination on an "order wide" basis.

Domestic interested parties further argue that respondents have failed to request an administrative review of this order. Domestic interested parties note that in an administrative review the programs can be fully investigated and subsidy rates could be changed if warranted, yet no administrative reviews have been requested by respondent parties. Finally, domestic interested parties state that the Department should reject respondents' attempts to have the rates



changed and the order revoked based on unsupported claims that the programs have lapsed or have been terminated.

In its rebuttal comments, Niagara argues that domestic interested parties' claims draw unsupported conclusions, and that the Department should find that revocation of the order will not result in subsidized sales and revoke the order. Niagara argues that it is subject to a low CVD margin on its imports and the contention by domestic interested parties that United Kingdom companies cannot sell in the United States without theoretical government assistance cannot be maintained. Niagara notes that its difficulty in making sales of subject merchandise to the United States has nothing to do with the CVD deposit rate, rather it is the "facts-available" antidumping rate that has distorted Niagara's normal U.S. selling patterns.

Niagara further argues that it has demonstrated that a fundamental "change in the programs" that underlie the CVD order has taken place because Niagara claims that all the programs have expired and no longer exist and no similar programs are potentially applicable since such programs are unlawful for steel producers under applicable British and European law. Finally Niagara argues that revocation of the order will not result in any subsidized sales to the United States and requests that the Department revoke the order.

#### Department's Position

The Department preliminarily finds that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy to the subject merchandise. In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD order would likely lead to continuation or recurrence of a countervailable subsidy, the Department will consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy. In the instant case, there have not been any administrative reviews of the order.

In response to the UKG claim that the privatization of British Steel "expunged the benefit of any subsidy that existed," and Spartan's argument that "any ongoing benefit from these subsidies was expunged by the privatization of British Steel," the Department determined in the Second 129 that the privatization of British Steel did not extinguish the non-recurring, allocable benefits received by BS plc. Consistent with that determination, the Department finds that the privatization of British Steel did not extinguish these subsidies. Additionally, the Department found in the Second 129 that the private-to-private sale of assets from Glynwed to Niagara extinguished the non-recurring, allocable benefits which were applied to Glynwed in the original investigation. Consistent with that determination, the Department finds that the change in ownership of Glynwed extinguished the non-recurring, allocable benefits applied to Glynwed.

Although the respondent parties claim that all six of the programs found to be countervailable have either been terminated or the benefit streams have been fully allocated, the Department has not been provided with evidence demonstrating that each of these programs has

been terminated, without replacement. The UKG and EU provided references to general prohibitions on state aid in British and European law, but these prohibitions do not refer to the specific programs countervailed under this order. In addition, the prohibitions carry exceptions, and assistance provided pursuant to these exceptions could be actionable under the Act.

In conducting this sunset review, the Department has examined the record of the original investigation as amended by British Steel Litigation, as well as the records developed in the First Sunset Review, the First 129, and the Second 129. Based on our analysis of this information as well as from other published determinations, we conclude that three of the six programs found to be countervailable in the original investigation have been terminated. Transportation assistance to BS plc. was found by the Department to be terminated in Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom, 62 FR 53306 (October 14, 1997) (Lead Bismuth). In addition, the government equity infusions and the cancelled NLF debt were specifically granted by United Kingdom Iron and Steel Acts which were specifically repealed by the British Steel Act of 1988. See British Steel Act of 1988 at Schedule 2. Therefore, for these three programs, it is not likely that subsidization will continue or recur were the order to be revoked.

With respect to the three remaining programs, the Regional Development Grants, European Regional Development Fund Aid and European Coal and Steel Community Article 54 Loans/Interest Rebates, we do not have sufficient evidence that these programs have been terminated with no residual benefits or replacement programs. Therefore, we preliminarily find that there is a likelihood of continuation or recurrence of a countervailable subsidy were the order to be revoked.

## *2. Net Countervailable Subsidy Likely to Prevail*

### Interested Parties' Comments

The domestic interested parties argue that the termination of the CVD order would lead to the continuation or recurrence of a countervailable subsidy for subject merchandise entering the U.S. market, at rates equal to or greater than those found in the initial sunset review. The domestic interested parties, citing the Sunset Policy Bulletin, note that the Department normally “provide{s} the Commission the net countervailable subsidy that was determined in the final determination of the original investigation.” The domestic interested parties note that a final determination was reached in the original investigation, and the rates, as amended, with the exception of that for Glynwed, were left unchanged in the First Sunset Review. Thus the domestic interested parties argue that the Department should find that the net countervailable subsidy rates likely to prevail are identical to the rates determined to exist in the original investigation as amended, and affirmed in the First Sunset Review (with the exception of that for Glynwed as noted).

Corus argues that the net countervailable subsidy rate likely to prevail if the Department revokes the order is zero, because there are no countervailable programs in place. Niagara argues that all the programs found countervailable at the time of the original investigation have been

terminated and cannot be reinstated in the future. It argues that past non-recurring subsidies would be fully amortized and would provide no current benefit. Niagara states that there could be no pass-through of benefits to Niagara following the sale of the relevant assets by Glynwed to Niagara, both private companies. Finally, Niagara argues that even if the programs assigned to Glynwed are presumed to apply to Niagara, the total of those programs was de minimis. Thus, Niagara claims that the CVD rate likely to result should the Department revoke the order is zero.

Spartan argues that all the programs found to be countervailable at the time of the original investigation have been terminated and cannot be reinstated in the future. Spartan further argues that the past subsidies are fully amortized and there can be no pass-through of benefits to Spartan following the sale by the administrator of Spartan Redheugh in receivership of the relevant assets. Thus, Spartan claims that the CVD rate likely to continue or recur should the Department revoke the order is zero.

### Department's Position

As noted above, since the issuance of the order, the Department has conducted a second Section 129 review of the First Sunset Review, in which we were able to review these six countervailable programs in light of the privatization of British Steel and the change in ownership of Glynwed. However, the Department has not conducted any administrative reviews of the CVD order. In conducting this sunset review, the Department has examined the record of the original investigation as amended by British Steel Litigation, as well as the records developed in the First Sunset Review, the First 129, and the Second 129.

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, this rate may not always be the most appropriate rate. In the instant case, as we have preliminarily recognized above, three programs previously found to be countervailable have been terminated. Thus, we are excluding these three programs from our calculation of the net countervailable subsidy likely to prevail. Of the remaining three programs, the benefits found under two, the ECSC Article 54 loans and interest rebates, and the ERDF aid to BS plc, were fully allocated prior to this sunset review. (Even using the 18-year AUL as determined to be the appropriate period in British Steel Litigation, the last year to which any benefits were allocated for these programs was 2004.) In addition, there is no evidence that additional disbursements have been made under these programs since the investigation. Thus, the net countervailable subsidy likely to prevail for these two programs is effectively zero.

The final program we are addressing in this review is the regional development grants program, which provided an allocable non-recurring subsidy. In our Second 129 determination, the Department found evidence that indicated amounts under this program were released to BS plc in 1996-98. Therefore, all benefits under this program have not been fully allocated as of the sunset review period. Accordingly, we preliminarily determine that it is appropriate to rely on the rate determined for British Steel in the investigation (as amended by British Steel Litigation) as the net countervailable subsidy likely to prevail.

With respect to Glynwed, the Department determined in the Second 129 that the company's change in ownership extinguished any non-recurring, allocable benefits it received before the change in ownership. Thus, we preliminarily find that the net countervailable subsidy likely to prevail with regard to Glynwed/Niagara is 0.00 percent, and the rate for “All-Other” producers/exporters, including BS, plc. is 0.77 percent ad valorem.

In response to Spartan’s arguments, the Department finds there is no basis to conduct a company-specific analysis regarding Spartan until it requests an administrative review of the CVD order. The “All-Other” producers/exporters rate as determined by this sunset review is thus applicable to Spartan.

### *3. Nature of the Subsidy*

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We are, however, providing the ITC with the following program descriptions.

#### 1. European Coal and Steel Community Article 54 Loans/Interest Rebates

ECSC Article 54 industrial investment loans are available only to the iron and steel industry. They are direct, long-term loans from the EC Commission provided for the purpose of purchasing new equipment or financing modernization. Companies applying for these rebates had to meet certain criteria, such as reduction in steel production capacity and improvements in processing. British Steel received three Article 54 long-term loans in 1977, and rebates during the first five years on one of these loans. The rebate was paid to British Steel on the interest rate. Two loans were granted during the time that British Steel was found to be uncreditworthy by the Department and the loans were therefore granted on terms that were inconsistent with commercial considerations.

#### 2. European Regional Development Fund Aid

The ERDF aid was created under the Treaty of Rome and provided grants to help redress the principal regional imbalance in the EC by participating in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions. ERDF aid is funded through the EC general budget and was provided to the UKG in 1991/1992 for BS plc’s Deeside Industrial Park to fund infrastructure development. In the investigation, the Department stated that if the total ERDF received, £9,287,938 from FY

84/85 through 89/90, was allocated in equal installments, the amounts received under this program in each year would be less than 0.50 percent of the company's sales in each year, so each amount was expensed in the year of receipt. Amounts received in FY 90/91 were also expensed in the year of receipt, 1991, the POI.

### 3. Regional Development Grants

RDG were made to British Steel under the Industry Act of 1972 and the Industrial Development Act of 1982, under which assistance was granted to manufacturers located in economically disadvantaged, industrial areas. These grants were disbursed over several years. British Steel received these grants during FY 1977/78 through 1985/86. In our Second 129 determination, the Department found evidence that indicated amounts under the UKG's Regional Development Grants program were released to BS plc in 1996-98.

### Preliminary Results of Review

As a result of this sunset review, the Department preliminarily finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth above. Further, we find the net countervailable subsidy likely to prevail if the order were revoked is 0.00 percent ad valorem for Glynwed/Niagara and 0.77 percent ad valorem "All-Other" producers/exporters, including BS, plc.

### Recommendation

Based on our analysis of the substantive responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

---

David M. Spooner  
Assistant Secretary  
for Import Administration

---

Date